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Press and Information

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Opinion of the Advocate General in Case C-160/03

Kingdom of Spain v Eurojust

ACCORDING TO ADVOCATE GENERAL POIARES MADURO, THE CALL FOR APPLICATIONS ISSUED BY EUROJUST FOR THE POST OF LIBRARIAN/ARCHIVIST SHOULD BE ANNULLED SINCE NO LINK WAS ESTABLISHED BETWEEN THE PROPOSED DUTIES AND THE REQUIREMENT OF SUBMITTING THE APPLICATION IN ENGLISH

Advocate General Poiares Maduro considers, however, that such partial annulment should not adversely affect the appointment already made on the basis of the call for applications published.

On 13 February 2003, eight calls for applications to establish reserve lists for temporary staff posts within Eurojust¹ were published in the *Official Journal of the European Union*.²

The linguistic knowledge required varied according to the posts to be filled but, for most of them, knowledge of English and French was required. As regards applications, the application form was to be filled in, not only in the language of publication in which the call for applications came to the notice of the candidate, but also in English. The letter of motivation and the *curriculum vitae* were to be drawn up in English.

The Kingdom of Spain brought an action before the Court of Justice of the European Communities against the calls for applications issued by Eurojust. It claimed that the calls for applications were contrary (a) to the Conditions for Employment of Other Servants of the European Communities ('the Conditions of Employment'), which require a candidate to have

¹ Eurojust was set up as a Union body by Council decision of 28 February 2002. Its task, in the field of serious crime, is to encourage and improve coordination of investigations and prosecutions in the various Member States, to improve cooperation between the competent authorities of the Member States and to provide support for the latter. Eurojust's headquarters are in the Hague and it has its own administrative structure.

² OJ 3003 C 34 A, pp. 1 to 19. They related in particular to the following posts: a data protection officer, an accounting officer, an IT expert for the European judicial network, a legal officer, a librarian/archivist, a press officer, and a secretary to the general administration.

a thorough knowledge of one of the Community languages and a satisfactory knowledge of another Community language, (b) to the Community language regime, which requires the use of and respect for all the official languages of the European Communities, and (c) to the principle of non-discrimination on grounds of nationality.

Advocate General Poiares Maduro delivered his Opinion in this case today.

The conditions of engagement

The Advocate General considers that **a measure laying down language requirements that go beyond those imposed by the Conditions of Employment should not contravene the principle of non-discrimination**. Accordingly, language requirements imposed by reason of the nature of the post must be strictly linked with the posts to be filled and must not result in any adverse impact on the requirement of geographical diversity of the staff of the Union.

Advocate General Poiares Maduro observes that European Union bodies enjoy a degree of autonomy in determining the nature of their functional needs. It follows that the legality of the contested measures can be affected only if the prescribed requirements are manifestly inappropriate. In those circumstances, even though Eurojust confined itself to relying on implicit reasons deriving from the description of the proposed duties, the Kingdom of Spain produced no specific evidence to cast doubt on the relevance to the performance of the proposed duties of the language knowledge required.

Moreover, it does not seem that the contested measures had any dissuasive effect on European citizens whose mother tongue was not one of those required in the contested measures. On the contrary, **the information produced appears to show a balanced representation of the various nationalities in the recruitment procedures and within Eurojust**.

The legality of the selection conditions

In Advocate General Poiares Maduro's opinion, the requirement that some of the documents needed for the submission of applications be written in English may be justified if, first, **that requirement is directly linked to the skills necessary for the posts to be filled and if, second, it does not have an excessive adverse impact on the legal interests of potential candidates**. That means that it cannot be justified by reasons relating to the organisation and running of the selection procedure.

In the case of the calls for applications in which knowledge of English is one of the qualifications required for appointment to the posts on offer, a link can be established between the obligation to submit the application in English and the prescribed professional requirements. Moreover, all interested parties are in a position to ascertain those requirements through the calls for applications published in all the official languages of the Union.

However, the call for applications for the post of librarian/archivist contains no express requirements concerning language qualifications, but provides that the documents to be submitted by way of application must be in English. **No link was therefore established between the proposed duties and the requirement of submitting the application in English**.

Consequently, the Advocate General suggests that the Court of Justice should annul the call for applications issued by Eurojust for the post of librarian/archivist to the extent to which it

requires that the applicants' documents are to be drawn up and submitted in English. However, such annulment should not adversely affect the appointment already made on the basis of the call for applications published.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DE, EN, ES, FR, NL

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

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